



TO: Scotty Douglass
FROM: Geoffrey M.T. Sturr
DATE: September 5, 2023
RE: Report of Investigation

Osborn Maledon, P.A. was retained by the City of Cottonwood to conduct an investigation of Chief of Police Steve Gesell's conduct on May 9, 2023. This is the report of that investigation.

Course of Investigation

The investigation was conducted by Geoffrey Sturr with the assistance of paralegal Michelle Burns. Chief Gesell was interviewed on July 7, 2023. He had previously received written notice of the investigation. The interview was recorded. Chief Gesell submitted a written statement on July 12, 2023. The following individuals were also interviewed: Mayor Tim Elinski (June 20, 2023); Vice Mayor Debbie Wilden (July 19, 2023); Council Member Stephen De Willis (July 18, 2023) Council Member Lisa DuVernay (July 17, 2023); Council Member Helaine Kurot (July 17, 2023); Council Member Jackie Nairn (July 17, 2023); Deputy City Manager Rudy Rodriguez (June 20, 2023); Human Resources Director Amanda Wilber (July 19, 2023); Commander Chris Dowell (July 18, 2023); and attorney Christina Werther (June 23, 2023).

Findings

1. On the morning of May 9, 2023, Chief Gesell was informed, and confirmed by reviewing an agenda on the City's website, that the City Council would discuss at a special meeting that evening a Reasonable Cause Determination the Arizona Attorney General's Civil Rights Division had issued to the City on April 25, 2023.

2. One item on the posted agenda was "[d]iscussion regarding the reasonable cause determination of the Arizona Civil Rights Division in *Dever v. City of Cottonwood Police Department* (No. CRD-2022-0550)." An accompanying document identified the subject of the agenda item as a "legal update" regarding the Reasonable Cause Determination and stated as background information: "Staff and legal counsel will provide the City Council with an update regarding the reasonable cause determination," and that the "Council may vote to convene an executive session."

3. Chief Gesell had previously been informed by then-City Attorney Steve Horton that the Reasonable Cause Determination had been issued and had received a copy.

4. Chief Gesell was concerned that he had not been informed that the Council would be discussing the Reasonable Cause Determination during the special meeting. He believed he should be present to answer Council Members' questions about its content.

5. As Chief Gesell stated in his July 12, 2023 written statement, when he learned of the special meeting, he speculated that then-Interim City Manager Rudy Rodriguez had not informed him of the meeting or invited him to attend because Mr. Rodriguez was "attempt[ing] to discredit me before the new city manager arrived the following Monday."

6. Chief Gesell called Council Member DuVernay to discuss the agenda, to confirm the Reasonable Cause Determination had been provided to Council members, and to express his desire to participate in the Council's executive session.

7. Chief Gesell spent time that afternoon preparing documents and information to present to the Council regarding the Reasonable Cause Determination.

8. At 5:00 p.m., Mr. Rodriguez sent an email to Chief Gesell and Human Resources Director Amanda Wilber which stated: "At tonight's executive session, we will have City Council and lawyers present. Amanda should also be present in the executive meeting. Chief, if you planned to attend, there will be no need at the executive session. Thanks. Rudy."

9. Chief Gesell did not respond to Mr. Rodriguez's email or seek to speak with Mr. Rodriguez about his desire to participate in the Council's executive session. When interviewed, Chief Gesell stated that Mr. Rodriguez's email "raised [his] concern significantly that this was a malicious, opportunistic attempt to defame me or discredit me before the new city manager arrived." Chief Gesell's July 12, 2023 written statement similarly states that Mr. Rodriguez's email "bolstered" his speculation that Mr. Rodriguez was excluding him from the executive session as "an opportunistic attempt to discredit [him] just prior to the new city manager's arrival."

10. The investigation found no evidence whatsoever to support Chief Gesell's speculation about the reasons Mr. Rodriguez informed Chief Gesell he did not need to attend the executive session.

11. At 5:53 p.m., Chief Gesell sent a text message to Council Member Kurot which read: "FYI. Rudy is attempting to keep me out of your executive session. It is either incompetence or malicious intent or both. I'm going to call him out if invited in. Horton is possibly involved but I'm speculating. Get me in please."

12. At 6:30 p.m., the Council began a work session. Chief Gesell and Commander Dowell attended the work session.

13. At the conclusion of the work session and before the special meeting began, Mayor Elinski spoke to Chief Gesell about the Council going into executive session to discuss the Probable Cause Determination. Commander Dowell was present and observed their interaction. During that discussion, Chief Gesell told Mayor Elinski that Mr. Rodriguez was attempting to “block” him from presenting information to the Council in executive session and stated that he must participate in the executive session to ensure Council heard his comments on the Probable Cause Determination. Mayor Elinski described Chief Gesell’s demeanor as irritated and agitated. Commander Dowell said Chief Gesell was angry, curt, disrespectful and rude when he spoke to Mayor Elinski.

14. At the outset of the Council’s discussion of the Probable Cause Determination a Council Member suggested that Chief Gesell be present during executive session to answer questions. Outside counsel Christina Werther advised the Council that the focus of the executive session was narrow, stating “[t]his is for legal advice . . . [b]ut . . . is not about the investigation itself. This is about where we’re at now with the determination and . . . how we move forward with the settlement.” After a Council Member asked whether the Council could, after going into executive session, ask questions of Chief Gesell, Ms. Werther advised that the Council could “go into executive session, [and] if the Chief is willing to be available and stick around . . . we can bring him back in . . . again . . . if you want to either bring him into session or we come back out into open session.” When Chief Gesell was asked if he would leave the Council chambers and wait outside, he said he would do so. He and Commander Dowell then left Council chambers.

15. While the Council was in executive session, Chief Gesell waited outside. When interviewed, Chief Gesell stated he was “very upset and . . . trying to control his emotions.” Commander Dowell stated that Chief Gesell was “fuming,” “very upset,” and “angry.”

16. After meeting in executive session, the Council did not seek to ask questions of Chief Gesell and adjourned the special meeting. Amanda Wilber sent Chief Gesell a text message saying the Council would not be calling him.

17. When Mr. Rodriguez was leaving Council chambers he was confronted by Chief Gesell. Mr. Rodriguez described Chief Gesell as noticeably agitated. He stood 12-18 inches from him, speaking with a raised voice. When asked if he felt physically threatened, Mr. Rodriguez stated that he did not immediately feel threatened but felt he needed to diffuse the situation, and that if the incident had gone any longer he would have been concerned. In his written statement, Chief Gesell stated he was “confused, frustrated and suspected malice,” and “believe[d] the volume of [his] voice was slightly elevated.”

18. Chief Gesell asked Mr. Rodriguez why he had not been allowed to participate in the executive session. Mr. Rodriguez sought to defuse the situation by stating he would get back to him the following day, but Chief Gesell insisted on receiving an answer. Mr. Rodriguez told Chief Gesell that the session involved a legal matter that did not warrant the Chief’s participation, and that his participation would not have been in the Council’s and the City’s best

interests. Chief Gesell stated that he believed his own reputation and that of the Police Department were on the line.

19. Chief Gesell then walked away, visibly angry.

20. Mr. Rodriguez observed Ms. Werther leaving the Council Chamber and was concerned that Chief Gesell would confront her, but Chief Gesell did not do so.

21. As Chief Gesell was crossing the street he yelled to Mr. Rodriguez “this is a travesty” and “this is not over Rudy.”

22. Mr. Rodriguez went to his office and remained there for 20 minutes to ensure that another confrontation with Chief Gesell would not occur.

23. Chief Gesell’s interactions with Mr. Rodriguez were observed by two Council Members. Council Member Kurot stated that when Mr. Rodriguez exited the building “the Chief lost his mind” and “came after” Mr. Rodriguez “yelling and screaming.” She was close enough to see this but couldn’t understand everything that was said. She left before their conversation ended. Council Member DuVernay observed Chief Gesell’s discussion with Mr. Rodriguez from a distance and recalled that Chief Gesell’s expression was terse and that he was evidently unhappy, but appeared to be speaking professionally.

24. After speaking with Mr. Rodriguez, Chief Gesell called Amanda Wilber. During that phone call Chief Gesell told Ms. Wilber he had “ripped Rudy a new one” and admitted he had yelled at Mr. Rodriguez. He told Ms. Wilber that Mr. Rodriguez, Mayor Elinski and Ms. Werther had colluded in preventing him from speaking to the Council about the Probable Cause Determination. He went on to criticize Mr. Rodriguez’s job performance.

25. The following day, Chief Gesell sent a text to Mr. Rodriguez which read: “Rudy, I was beyond frustrated last night with the sequence of events. I owe you an apology for my tone. I get passionate when good is trampled by falsehood and self interest. FYI Pierce Coleman provided a logical rationale of an open meetings violation if I was allowed to answer questions. Totally made sense but was not conveyed prior or at the meeting. If you got the rationale from Steve H, he apparently erred.”

26. On May 11, 2023, Chief Gesell was asked to meet with Mr. Rodriguez and Ms. Wilber. When interviewed, Chief Gesell stated that he “expected to get a letter of reprimand for some alleged type of policy violation which I thought in my mind would be unfounded and would not make [Mr. Rodriguez] look good [and which] [i]n the end . . . would backfire on him.” When he was informed he was being placed on administrative leave, Chief Gesell told Mr. Rodriguez that the decision to place him on administrative leave was “weak” and “incompetent” and reflected Mr. Rodriguez’s poor decision making.

Conclusions

Chief Gesell's conduct violated City policies set forth in the City of Cottonwood Employee Manual Section 8 – Corrective Action and the Cottonwood Police Department Policy Manual.

A. After receiving an email from then-Interim City Manager Rodriguez telling him that he did not need to attend the executive session, Chief Gesell speculated without any justification that Mr. Rodriguez was seeking to harm his standing with the incoming City Manager by excluding him from the executive session. Chief Gesell then sent a text message to Council Member Kurot alleging that Mr. Rodriguez was either incompetent or was acting with malicious intent to harm him by excluding him from the executive session. His text message made speculative allegations that former City Attorney Steve Horton had colluded with Mr. Rodriguez to prevent him from participating in the executive session. He asked Council Member Kurot to get him into the executive session and threatened to “call out” Mr. Rodriguez if he was permitted to participate in the executive session. By ignoring Mr. Rodriguez's email and seeking assistance from a City Council member to attend the executive session, by making baseless allegations against senior City officials, and by threatening to “call out” Mr. Rodriguez if allowed to attend the executive session, Chief Gesell violated the following policies:

1. Section 8: Insubordination.
2. Section 8: Acts detrimental to the mission of the City.
3. Section 8: Acts that bring discredit to the City.
4. CPD Policy Manual Section 321.5.8(i) – acts bringing discredit to the Department.
5. CPD Policy Manual Section 321.5.9(m) – acts unbecoming a member of the Department, contrary to good order, or which tend to reflect unfavorably on the Department.

B. After receiving an email from then-Interim City Manager Rodriguez telling him that he did not need to attend the executive session, Chief Gesell told Mayor Elinski in a conversation before the Council's special meeting that Mr. Rodriguez was attempting to block him from presenting information to the Council in executive session and insisted that he attend the executive session. He was angry, curt, disrespectful and rude in his communications with Mayor Elinski. In so doing, Chief Gesell violated the following policies:

1. Section 8: Insubordination.
2. Section 8: Discourtesy to another employee.
3. Section 8: Acts detrimental to the mission of the City.
4. Section 8: Acts that bring discredit to the City.
5. CPD Policy Manual Section 321.5.8(i) – acts bringing discredit to the Department.
6. CPD Policy Manual Section 321.5.9(f) – discourteous, disrespectful treatment of any member of the City.

7. CPD Policy Manual Section 321.5.9(m) – acts unbecoming a member of the Department, contrary to good order, or which tend to reflect unfavorably on the Department.

C. After receiving an email from then-Interim City Manager Rodriguez telling him that he did not need to attend the executive session and observing the Council decide, based on advice from attorney Christina Werther, that he should not participate in the executive session, Chief Gesell angrily confronted Mr. Rodriguez after the Council meeting, in the presence of Council Members, City employees and the public, demanding to be told why he had not been permitted to attend the executive session. Unhappy with Mr. Rodriguez's explanation, he walked away from Mr. Rodriguez yelling "this is a travesty" and "is not over." Chief Gesell did so in a manner that left Mr. Rodriguez with the impression that he could be at risk of physical harm if the situation were not diffused. In so doing, Chief Gesell violated the following policies:

1. Section 8: Insubordination.
2. Section 8: Discourtesy to another employee.
3. Section 8: Acts detrimental to the mission of the City.
4. Section 8: Acts that bring discredit to the City.
5. CPD Policy Manual Section 321.5.8(i) – acts bringing discredit to the Department.
6. CPD Policy Manual Section 321.5.9(f) – discourteous, disrespectful treatment of any member of the City.
7. CPD Policy Manual Section 321.5.9(m) – acts unbecoming a member of the Department, contrary to good order, or which tend to reflect unfavorably on the Department.

D. After receiving an email from then-Interim City Manager Rodriguez telling him that he did not need to attend the executive session and observing the Council decide, based on advice from attorney Christina Werther, that he should not participate in the executive session, Chief Gesell told Human Resources Director Amanda Wilber that Mr. Rodriguez, Mayor Elinski and Ms. Werther had colluded in preventing him from speaking to the Council about the Probable Cause Determination. In so doing, Chief Gesell violated the following policies:

1. Section 8: Acts detrimental to the mission of the City.
2. Section 8: Acts that bring discredit to the City.
3. CPD Policy Manual Section 321.5.8(i) – acts bringing discredit to the Department.
4. CPD Policy Manual Section 321.5.9(m) – acts unbecoming a member of the Department, contrary to good order, or which tend to reflect unfavorably on the Department.